

interpreting the terms therein, particularly “person engaged in farming operations” which is not defined in the Section, are applicable to an extent in interpreting the Section. The basis of this is the legislative intent of the Section to pre-empt State laws reflecting that “farm products” exception, as shown in the House Committee Report on Pub. L. 99-198, No. 99-271, Part 1, September 13, 1985, at pages 108 *et seq.*

(b) That UCC Section 9-307(1) reads as follows:

(1) A buyer in ordinary course of business (subsection (9) of Section 1-201) *other than a person buying farm products from a person engaged in farming operations* takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence. (emphasis added)

§ 205.212 “Buyer in ordinary course of business” and “security interest.”

The terms “buyer in ordinary course of business” and “security interest” are defined in subsections (c) (1) and (7). There are differences between those definitions and the UCC definitions of the same terms. In interpreting those differences, the following would be pertinent:

(a) The legislative intent discussed above in §205.211, to pre-empt State laws reflecting the “farm products” exception; and

(b) The legislative intent shown in subsections (a) and (b) that certain persons take free and clear of certain interests of a “secured lender” “when the seller fails to repay the lender,” unless such persons have information about such interests made available to them as provided in the Section.

§ 205.213 Obligations subject—“person indebted”—“debtor.”

(a) A debt need not exist at the time of filing of an EFS. The basis for this is that subsection (c)(4) does not require the EFS, and subsection (c)(2)(C) does not require the master list, to show any amount of debt.

(b) The Section does not provide for the transaction in which one person subjects a product to a security interest for another’s debt. However the terms “person indebted” and “debtor” in the Section refer to the person who owns a product and subjects it to a se-

curity interest, whether or not that person owes a debt to the secured party. The basis for this is the purpose for which the information is supplied. Any buyer of a farm product, commission merchant, or selling agent querying a master list or system operator about a prospective seller of a farm product is interested in whether that seller has subjected that product to a security interest, not in whether the debt is owed by that seller or by another.

(c) Security interests existing prior to establishment of a system can be filed in such a system and reflected in the master list if documents are in existence or are created which meet the requirements of subsection (c)(4) besides filing, if such documents are filed wherever State law requires, and if the system operator receives the information about them needed for the master list.

(d) A system can be in compliance with the Section, although it reflects security interests not supported by EFS’s as defined in the legislation, and although it reflects security interests on items other than farm products. However, subsections (e) (2) and (3), and (g)(2) (C) and (D), will apply only as to entries reflecting farm products and supported by EFS’s as defined in the Section, and it must be possible to distinguish the entries to which these provisions apply from the other entries.

(Approved by the Office of Management and Budget under control number 0580-0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.214 Litigation as to whether a system is operating in compliance with the Section.

(a) The requirements for a system in subsection (c) are written as the definition of the term “central filing system,” so that failure of a system to meet any such requirement, either at the time of its establishment or later, will mean that it is not a “central filing system” as defined.

(b) The issue whether a system, after certification, is operating in compliance, thus whether it is a “central filing system” as defined, could be litigated and ruled on in a case involving only private parties, such as a lender

and a buyer of a farm product. The only immediate effect of a finding in such a case, that a system is not a “central filing system” as defined, would be that the rights of the secured party in the case would be as if the State had no system. However, others would be in doubt as to whether they could safely rely on the same system.

PART 206—SWINE CONTRACT LIBRARY

Sec.

206.1 Definitions.

206.2 Swine contract library.

206.3 Monthly report.

AUTHORITY: Sec. 941, Pub. L. 106–78, 113 Stat. 1135; 7 CFR 2.22 and 2.81.

SOURCE: 68 FR 47826, Aug. 11, 2003, unless otherwise noted.

§ 206.1 Definitions.

The definitions in this section apply to the regulations in this part. The definitions in this section do not apply to other regulations issued under the Packers and Stockyards Act (P&S Act) or to the P&S Act as a whole.

Accrual account. (Synonymous with “ledger,” as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Base price. The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit.

Contract. Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine for slaughter, except a negotiated purchase (as defined in this section).

Contract type. The classification of contracts or risk management agreements for the purchase of swine committed to a packer, by the determination of the base price and the presence

or absence of an accrual account or ledger (as defined in this section). The contract type categories are:

(1) Swine or pork market formula purchases with a ledger,

(2) Swine or pork market formula purchases without a ledger,

(3) Other market formula purchases with a ledger,

(4) Other market formula purchases without a ledger,

(5) Other purchase arrangements with a ledger, and

(6) Other purchase arrangements without a ledger.

Formula price. A price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

Ledger. (Synonymous with “accrual account,” as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Negotiated purchase. A purchase, commonly known as a “cash” or “spot market” purchase, of swine by a packer from a producer under which:

(1) The buyer-seller interaction that results in the transaction and the agreement on actual base price occur on the same day; and

(2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the swine are committed to the packer.

Noncarcass merit premium or discount. An increase or decrease in the price for the purchase of swine made available by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.

Other market formula purchase. A purchase of swine by a packer in which the pricing determination is a formula